

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESSE H. GARCIA, TISHA GARCIA, individually
and as parents and next friends of BARBARA GARCIA,
a minor,

Plaintiffs,

v.

Case No. 1:16-cv-00172

GEICO GENERAL INSURANCE COMPANY,
A foreign corporation doing business in the
State of New Mexico,

Defendant.

NOTICE OF REMOVAL

Defendant GEICO General Insurance Company, (hereinafter "GEICO") by and through its counsel of record, Chapman and Charlebois, P.C., (Donna L. Chapman and Mark D. Trujillo), hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, and in support thereof, states as follows:

1. Plaintiffs Jesse H. Garcia, Tisha Garcia and Barbara Garcia ("Plaintiffs") filed their Complaint for Personal Injury ("Complaint") in the First Judicial District, Rio Arriba County, State of New Mexico, in Cause No. D-117-CV-2016-00030 (hereinafter "State Court Action") on January 28, 2016. (See Plaintiffs' Complaint, attached hereto as Exhibit A).

2. In their Complaint, Plaintiffs allege they are residents of the State of New Mexico. (*Id.* at ¶ 1).

3. Plaintiffs named GEICO, as the only Defendant in Plaintiffs' Complaint.

4. GEICO asserts it is incorporated and its principal place of business is in the state of Maryland.

5. Diversity of citizenship is present in this matter as set forth in 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441(b)(2).

6. GEICO accepted service through the Superintendent of Insurance on February 11, 2016. (See Exhibit B).

7. Less than thirty (30) days have passed since GEICO accepted service of the initial pleadings on this matter.

8. As GEICO has accepted service and is the only Defendant served in this matter, 28 U.S.C. § 1446(b)(2)(A) is satisfied. (See Register of Actions for the State Court Action, hereto attached as Exhibit C).

9. Pursuant to Plaintiffs' allegations, the amount in controversy exceeds \$75,000, as set forth in 28 U.S.C. §§ 1441(b)(2).

10. Pursuant to the attached documentation from Plaintiffs' counsel, dated March 30, 2015, the amount in controversy exceeds the jurisdictional amount of \$75,000. See also, *Hanna v. Miller*, 163 F.Supp. 2d 1302, 1305-06 (D.N.M. 2001). (See Demand letters from Plaintiff's counsel dated March 30, 2015, and April 16, 2015, hereto attached as Exhibit D.)

11. This case may be removed to this Court by GEICO pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1446.

12. By and through this Notice of Removal, GEICO removes all claims asserted against it on the basis of diversity jurisdiction, which is conferred upon this Court pursuant to 28 U.S.C. §§ 1332 and 1441.

13. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being concurrently served upon the Plaintiffs on this date.

14. Pursuant to 28 U.S.C. § 1446(d), GEICO is concurrently filing a Notice of Filing of Removal in the State Court Action, a copy of which is hereto attached as Exhibit E.

15. In addition to the Notice of Filing Notice of Removal in the State Court Action, GEICO is concurrently filing an Entry of Appearance in the State Court Action on this date, a copy of which is hereto attached as Exhibit F.

16. Pursuant to 28 U.S.C. § 1446(a) and D.N.M.LR-Civ. 81.1(a), all process, pleadings, and orders from the State Court Action will be filed with this Court in a separate Transmittal of State Court Record within twenty-eight days (28) of this Notice.

17. A Civil Cover Sheet for this Court is hereto attached as Exhibit G.

WHEREFORE, the removing Defendant gives notice the above-styled action, which was pending in the First Judicial District, Rio Arriba County, State of New Mexico, as Cause No. D-117-CV-2016-00030 is removed to this Court.

Respectfully submitted,

CHAPMAN AND CHARLEBOIS, P.C.

/s/ Mark D. Trujillo, Attorney at Law

Donna L. Chapman

Mark D. Trujillo

P.O. Box 92438

Albuquerque, NM 87199

505-242-6000

donna@cclawnm.com

mark@cclawnm.com

Attorneys for Defendant GEICO

I HEREBY CERTIFY that on the 10th day of March, 2016, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing to the following counsel of record:

Matthew J. O'Neill
Whitener Law Firm
4110 Cutler Ave. NE
Albuquerque, NM 87110
505-242-333

/s/ Mark D. Trujillo, Attorney at Law
Mark D. Trujillo

STATE OF NEW MEXICO
COUNTY OF RIO ARRIBA
FIRST JUDICIAL DISTRICT COURT

JESSE H. GARCIA, TISHA GARCIA, individually
and as parents and next friends of BARBARA GARCIA, a minor,

Plaintiffs,

vs.

NO. D-117-CV-2016-00030

Case assigned to Attrep, Jennifer L.

GEICO GENERAL INSURANCE COMPANY, a foreign corporation
Doing business in the State of New Mexico,

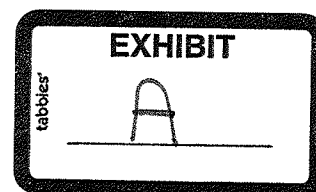
Defendant.

**COMPLAINT FOR PERSONAL INJURY, UNINSURED/UNDERINSURED MOTORIST
BENEFITS AND PUNITIVE DAMAGES**

COME NOW Plaintiffs, by and through their attorneys, Whitener Law Firm, P.A., and for his
Complaint for Personal Injury, Punitive Damages and Uninsured/Underinsured Motorist Benefits
states:

I. PARTIES JURISDICTION AND VENUE

1. Plaintiffs reside in the County of Rio Arriba, State of New Mexico.
2. Defendant Geico General Insurance Company (hereinafter "Geico") is a foreign corporation doing business in Rio Arriba, State of New Mexico.
3. On or about December 7, 2013, Plaintiffs had in force, a policy of insurance with Defendant Geico that provided uninsured/underinsured motorist benefits.
4. Upon information and belief, Defendant Henrard was insured by Defendant Progressive at the time of the automobile accident that occurred in this complaint.
5. The events which form the subject matter of this Complaint occurred in the County of Bernalillo, State of New Mexico.



6. This court has jurisdiction over the parties and the subject matter herein, and venue is properly laid in Rio Arriba County, State of New Mexico.

II. GENERAL ALLEGATIONS AND NEGLIGENCE

7. Plaintiffs reallege and incorporate paragraphs 1-8 as if set forth fully herein.

8. On or about December 7, 2013, Plaintiff Tisha Garcia, along with passengers, Jesse H. Garcia and Barbara Garcia, was driving her vehicle northbound on Louisiana Boulevard and stopped at a red light at the intersection of Menaul.

9. On or about December 7, 2013, Underinsured Motorist Sylvia Henrard ("hereinafter Henrard") was operating a vehicle northbound on Louisiana.

10. Henrard failed to stop for traffic in front of her and collided into the vehicle behind the Plaintiffs' Vehicle.

11. The impact of the collision caused the vehicle in front of Henrard to collide into Plaintiffs' vehicle.

12. Defendant Henrard had a duty to drive the vehicle she was operating in a safe, careful and prudent manner.

13. In violation of her duty, Defendant Henrard drove the vehicle she was operating in an unsafe, imprudent and/or careless manner.

14. In violation of her duties, Defendant Henrard was negligent by committing one, or more than one, or all, of the following acts or omissions:

Driver inattention;

Failing to keep a proper lookout;

Following too closely;

Failing to keep a vehicle under control;

Driving recklessly;

Driving under the influence;

Failure to operate a vehicle in a safe and reasonable manner;

Driving a vehicle in a careless manner;

Driving a vehicle in violation of existing statutes and ordinances.

15. As a direct and proximate result of Underinsured Motorist Henrard's negligence conduct, Plaintiffs have or will sustain damages including, but not limited to: past and future medical expenses; past and future pain and suffering; past and future lost wages; pre and post judgment interest; and/or costs.

III. DRIVING UNDER THE INFLUENCE OF ALCOHOL, RECKLESS DRIVING AND PUNITIVE DAMAGES

16. Plaintiffs realleges and incorporates paragraphs 1-15 as if set forth fully herein.

17. On or about December 7, 2013, at the time of the accident, Henrard drove her vehicle in a reckless manner in violation of New Mexico Law.

18. On or about December 7, 2013, at the time of the accident, Henrard drove her vehicle while under the influence of alcohol in violation of New Mexico Law.

19. Henrard drove her vehicle carelessly and/or heedlessly in willful or wanton disregard of the rights and/or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property.

20. As a direct result of Henrard operating her vehicle in a reckless manner and/or under the influence, she caused her vehicle to collide with the vehicle in front of her to collide with the vehicle of Plaintiffs.

21. As a direct result of Henrard operating her vehicle carelessly and/or heedlessly in

willful or wanton disregard of the rights or safety of others and without due caution and/or circumspection and/or at a speed or in a manner so as to endanger or be likely to endanger any person or property, she did cause her vehicle to collide with into the rear of the vehicle in front of her and cause that vehicle to collide with the vehicle of Plaintiffs.

22. As a direct and proximate result of Henrard's willful, wonton and reckless conduct, Plaintiffs have sustained, or will sustain, damages which include, but are not limited to past and future medical expenses; past and future pain and suffering; past and future lost wages; and pre and post judgment interest; and/or costs.

23. Plaintiffs pray for punitive damages as a result of Henrard's above described reckless, willful and wonton conduct and/or the intentional doing of an act with utter indifference to the consequences.

24. Plaintiffs seek punitive damages for the purpose of punishing Henrard and to deter others from the commission of like offenses.

25. As a direct and proximate result of Henrard's negligence conduct, Plaintiffs have or will sustain damages including, but not limited to: past and future medical expenses; past and future pain and suffering; past and future lost wages; pre and post judgment interest; and/or costs.

IV. UNINSURED / UNDERINSURED MOTORIST CLAIMS

26. Plaintiffs realleges and incorporates paragraphs 1-25 as if set forth fully herein.

27. At all relevant times, Plaintiffs' had, in force a policy of insurance with Defendant Geico that provided for uninsured and underinsured motorist benefits to Plaintiffs.

28. At all times pertinent hereto, underinsured motorist Henrard was an uninsured/underinsured motorist as defined by New Mexico Law and pursuant to the policy of insurance with Defendant Geico.

29. As a result of underinsured Henrard' underinsured status, the laws of the State of New Mexico, the insurance contract made in New Mexico between Defendant Geico and Plaintiffs, Plaintiffs' are entitled to recover all of the above described damages incurred as a result of the above described automobile accident from Defendant Geico under the Underinsured Motorist Coverage of the aforementioned policy.

30. Defendant Geico should be directed to pay Plaintiffs for all the above described compensatory and punitive damages with only an offset for the amount paid by Defendant Progressive Direct Insurance Company under the policy held by the tortfeasor.

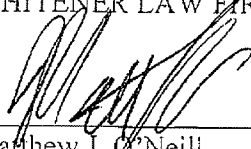
31. Defendant Geico consented to Plaintiffs' settlement with Defendant Progressive Direct Insurance and tortfeasor Henrard.

32. Pursuant to New Mexico Law Defendant Geico steps into the shoes of Henrard for purposes of all claims that could have been made against Henrard and is, for all intents and purposes, Henrard.

WHEREFORE, Plaintiffs respectfully request a reasonable award of damages and an award of punitive damages in an amount to be proven at trial and such other and further relief as the Court deems just and proper.

Respectfully submitted:

WHITENER LAW FIRM, P.A.



Matthew J. O'Neill
Attorneys for Plaintiffs
4110 Cutler Ave. NE
Albuquerque, NM 87110
(505) 242-3333

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

Mailing Address: P.O. Box 1689, Santa Fe, NM 87504-1689

Physical Address: 1120 Paseo de Peralta, Room 428, Santa Fe, NM 87501

Main Phone: (505) 827-4601; Main Fax (505) 827-4734; Toll Free: 1-855-4-ASK-OSI

www.osi.state.nm.us

**SUPERINTENDENT OF
INSURANCE**

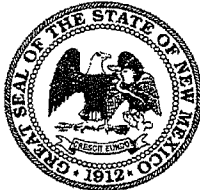
John G. Franchini – (505) 827-4299

**ACTING DEPUTY
SUPERINTENDENT**

Alan Seeley – (505) 827-4307

February 11, 2016

GEICO General Insurance Co.
Legal Dept. - Gregory S. Jacobi.
4201 Spring Valley Rd.
Dallas, TX 75244



Service of Process

Room 434
(505) 827-1291

Re: Jesse H. Garcia, Tisha Garcia, individually and a parents and next friends of Barbara Garcia, a minor Vs GEICO General Insurance Company, a foreign company doing business in the State of New Mexico,
D117CV2016-00030

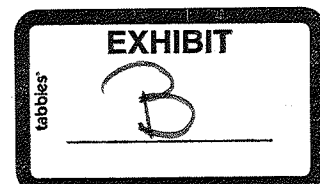
Dear Mr. President:

In accordance with the provisions of NMSA 1978, Sections 59A-5-31 & 59A-32, enclosed is a copy of a Summons, Complaint for Personal Injury, Uninsured/Underinsured Motorist Benefits and Punitive Damages, Certificate of Service and Plaintiff's First Set of Interrogatories to GEICO General Insurance Company, to Defendant GEICO General Insurance Company in the State of New Mexico on the above styled cause. Service has been accepted on your behalf as of February 11, 2016.

Respectfully,

John G. Franchini, Superintendent

Enclosure
CERTIFIED MAIL 7012 3460 0000 1399 5365



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Location : Rio Arriba County [Images](#) [Help](#)**REGISTER OF ACTIONS****CASE No. D-117-CV-2016-00030**

Jesse H Garcia, et. al., v. Geico General Insurance Company

§
§
§
§
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§
 Case Type: **Tort Auto**
 Date Filed: **01/28/2016**
 Location: **Rio Arriba County**
 Judicial Officer: **Attrep, Jennifer L.**
PARTY INFORMATION

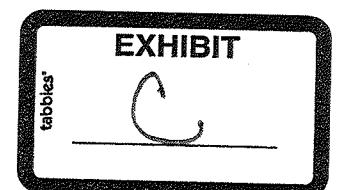
		Attorneys
Defendant	Geico General Insurance Company	
Plaintiff	Garcia, Barbara	Matthew J. O'Neill <i>Retained</i> 505-242-3333(W)
Plaintiff	Garcia, Jesse H	Matthew J. O'Neill <i>Retained</i> 505-242-3333(W)
Plaintiff	Garcia, Tisha	Matthew J. O'Neill <i>Retained</i> 505-242-3333(W)

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS
01/28/2016	Cause Of Actions Minor Settlement Action Type Action
01/28/2016	<u>OPN: COMPLAINT</u> <i>For Pesonal Injury Uninsured/Underinsured Mortorist Benefits and Punitive Damages</i>
02/04/2016	<u>SUMMONS ISSUED</u> <i>Summons.Geico</i>
03/04/2016	<u>ACCEPTANCE OF SERVICE</u> <i>Acceptance of Service</i>

FINANCIAL INFORMATION

	Plaintiff Garcia, Jesse H	
	Total Financial Assessment	132.00
	Total Payments and Credits	132.00
	Balance Due as of 03/09/2016	0.00
01/29/2016	Transaction Assessment	132.00
01/29/2016	File & Serve Payment Receipt # TAMD-2016-45 Garcia, Jesse H	(132.00)



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Whitener
LAW FIRM, P.A.

Russell K. Whitener (1948-2013)

Thomas M. Allison | Matthew J. O'Neill

Richard W. Suttan | Daniel P. Buttram | Nicholas J. Rimmer



March 30, 2015

GEICO Insurance

Attn: Rebekah Preston

P.O. Box 509105

San Diego, CA 92150-9930

RE: My Client: Tisha Garcia
Date of Loss: 12/07/13
Claim No: 021900862-0101-055
Your insured: Tisha Garcia

Dear Ms. Preston:

Enclosed please find a settlement package that addresses the liability, physical injuries, and damages in the above-captioned matter. This material is being submitted for settlement discussion purposes only regarding the underinsured motorist bodily injury claim of Tisha Garcia (hereinafter "Tisha") and may not be used for any other purpose. **We are requesting written permission from you to accept a policy limits offer from Progressive Insurance.**

I. LIABILITY

This is a clear case of liability against the underinsured motorist Sylvia Henrard (hereinafter "Henrard"). The collision occurred on December 7, 2013 at the intersection of Louisiana Boulevard and Menaul Boulevard in Albuquerque, New Mexico. Tisha was a restrained driver who was traveling northbound on Louisiana Boulevard. Tisha was the first car in line stopped for the red light at the intersection, when Henrard, who was also traveling northbound on Louisiana Boulevard, failed to stop for the traffic in front of her colliding into the rear of the vehicle in front of her. The impact of the collision caused the vehicle in front of Henrard to strike into Tisha's vehicle. Henrard immediately admitted to the police officer on scene that she had consumed two alcoholic beverages. The contributing factors to this collision were Henrard's failure to avoid contact with the other vehicles, failure to yield the right of way, and driving under the influence of alcohol. Henrard was arrested and booked for Driving While Intoxicated. An Albuquerque Police Department Uniform Crash Report and a Supplemental DWI Report have been enclosed for your review.

II. INJURIES AND TREATMENT

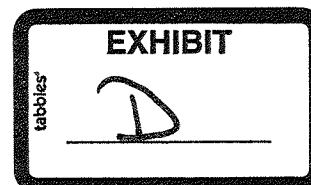
On December 10, 2013, Tisha presented to nurse practitioner, Tanya Gallegos, with Presbyterian Espanola Clinic with complaints of neck and back pain. Tisha advised that her back pain radiated to her left hip and that she had been taking Ibuprofen. Examination revealed tenderness to her bilateral paraspinal muscles in her back and spinal tenderness at C3-C4 with paraspinal muscle tenderness, and paraspinal spasms throughout her neck and back. Radiographs of Tisha's cervical spine were ordered. Tisha was diagnosed with a cervical neck sprain and lumbago.

4110 Cutler Ave NE

Albuquerque, NM 87110

505 242 3333, Fax 505.242.3322

WhitenerLawFirm.com



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Tisha was given a prescription for cyclobenzaprine and she was advised to return to the clinic in two to three days with worsening or no improvement of her symptoms. Tisha was instructed to increase her fluid intake, rest, take Tylenol or Motrin for her pain, and to apply heat to her neck and back.

On December 10, 2013, Tisha presented to Presbyterian Espanola Hospital for radiographs of her cervical spine to be completed.

Tisha presented to Dr. Vidya Subramanian with Presbyterian Espanola Clinic on January 3, 2014 for a follow up appointment of her neck and back pain. Examination revealed paravertebral muscle spasms in the cervical region. Tisha was diagnosed with cervicalgia and an MRI of her cervical spine was ordered. Tisha was given a prescription for Neurontin and she was instructed to rest and to apply ice to her areas of pain as needed. Tisha was further instructed to perform back strengthening exercises and to follow up with the clinic in one month.

As ordered, Tisha presented to Presbyterian Espanola Hospital on February 26, 2014 for an MRI of her cervical spine to be completed. **Results revealed slight bulging of the C5-6 interspace without cord compression.**

On March 5, 2014, Tisha returned to Dr. Subramanian for an evaluation of her chronic neck problems which included pain in her right trapezius area. Examination revealed bilateral trapezius spasms in the cervical region the right side greater than the left side. Dr. Subramanian recommended a trigger point injection and Tisha was referred to physical therapy. Dr. Subramanian discussed in detail the trigger point injection procedure with Tisha and she signed a consent to proceed with the injection. **After sterile prep of the skin area, a trigger point injection was performed at the site of maximal tenderness on the right trapezius using 1% Lidocaine and Kenalog. The procedure was repeated on the opposite side.** Tisha tolerated the procedure well and stated she had modest relief of pain immediately. Tisha was advised to start physical therapy and to follow up with the clinic in four weeks or sooner if needed.

Tisha returned to Dr. Subramanian on May 16, 2014 for a follow up appointment of her chronic neck pain and she was requesting a trigger point injection. Tisha advised that she had not started physical therapy. Examination revealed bilateral trapezius spasms in the cervical region the right side greater than the left side. **After sterile prep of the skin area, a trigger point injection was performed at the site of maximal tenderness on the right trapezius using 1% Lidocaine and Kenalog. The procedure was repeated on the opposite side.** Tisha tolerated the procedure well and stated she had modest relief of pain immediately. Tisha was advised to start physical therapy and to follow up with the clinic in four weeks or sooner if needed.

III. MEDICAL EXPENSES / DAMAGES

As a result of injuries arising out of the accident, Tisha has incurred conservative medical expenses in the amount of Five Thousand Five Hundred Eighty Dollars and 50/100 (\$5,580.50). A medical summary, as well as all medical bills, notes, and narrative reports are enclosed.

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IV. LOST WAGES/OUT OF POCKET

At the time of the accident, Tisha was employed by Presbyterian Espanola Hospital. Due to the injuries sustained in the accident, Tisha was unable to work for 36 hours. At the time she earned Twenty Seven Dollars and 32/100 (\$27.32) per hour. According to my calculations, Tisha has lost wages in the amount of Nine Hundred Eighty Three Dollars and 52/100 (\$983.52).

Accordingly, this brings Tisha's special damages to a total amount of Six Thousand Five Hundred Sixty Four Dollars and 02/100 (\$6,564.02).

V. PUNITIVE DAMAGES

As stated previously, Henrard was charged and arrested for driving while intoxicated. It is black-letter law in New Mexico that driving while intoxicated is a sufficient basis for imposing punitive damages see *Sanchez v. Wiley*, 124 N.M. 47 (Ct. App. 1997). A jury in Bernalillo County will be particularly outraged by Henrard's behavior given our state's continuing problems related to drunk drivers.

Punitive damages are often calculated in multiples of the base damages. Here, Henrard's conduct was particularly egregious. The legal limit for a presumption of impairment is .08. However, Henrard was at a .23 at the time of the crash. Since he was 3x the legal limits for, the multipliers of the compensatory damages for driving under the influence of alcohol or drugs should be a factor of 3 and therefore a 3x multiplier.

New Mexico's Supreme Court also guides us in calculating punitive damages. In economic injury cases, if damages are significant and injury is not hard to detect, the ratio of punitive damages to harm generally should not exceed ten to one; however, in a case where injury is difficult to quantify a disparity in the ratio can be larger to satisfy the injury *Weidler v. Big J Enterprises, Inc.*, 124 N.M. 591 (1997). Punitive Damages are designed to punish the driver for her conduct and to deter others from similar conduct. We believe the punitive damages Tisha is entitled to receive in this case to be significant.

If you are denying coverage for punitive damages in this matter pursuant to the insurance policy, then please state this in writing and we will review the assets of your insured.

IV. CONCLUSION

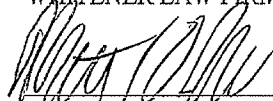
Given the above and full consideration of all losses incurred, Tisha asks that you tender an offer of policy limits to resolve her underinsured motorist bodily injury and lost wages claims. While Tisha has not authorized my office to accept an offer of policy limits, she is willing to entertain such an offer.

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We would appreciate your review of the enclosed material and that you contact us at your earliest convenience to discuss settling this case without the necessity of litigation, additional costs, and attorneys' fees. Thank you for your attention to this matter.

Very truly yours,

WHITENER LAW FIRM, P.A.

A handwritten signature in dark ink, appearing to read "Matthew J. O'Neill", is written over a horizontal line.

Matthew J. O'Neill, Esq.

MJO/r
Enclosure

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Whitener
LAW FIRM, P.A.

Russell K. Whitener (1948-2013)

Thomas M. Allison | Matthew J. O'Neill

Richard W. Suttan | Daniel P. Buttram | Nicholas J. Rimmer

March 30, 2015

GEICO Insurance
 Attn: *Rebekah Preston*
 P.O. Box 509105
 San Diego, CA 92150-9930

RE: My Client: **Jesse H. Garcia**
 Date of Loss: **12/07/13**
 Claim No: **021900862-0101-055**
 Your insured: **Tisha Garcia**

Dear Ms. Preston:

Enclosed please find a settlement package that addresses the liability, physical injuries, and damages in the above-captioned matter. This material is being submitted for settlement discussion purposes only regarding the underinsured motorist bodily injury claim of Jesse H. Garcia (hereinafter "Jesse") and may not be used for any other purpose. **We are requesting written permission from you to accept a policy limits offer from Progressive Insurance.**

I. LIABILITY

This is a clear case of liability against the underinsured motorist Sylvia Henrard (hereinafter "Henrard"). The collision occurred on December 7, 2013 at the intersection of Louisiana Boulevard and Menaul Boulevard in Albuquerque, New Mexico. Jesse was a restrained passenger in the vehicle driven by his spouse, Tisha Garcia (hereinafter "Tisha"), who was traveling northbound on Louisiana Boulevard. Tisha was the first car in line stopped for the red light at the intersection when Henrard, who was also traveling northbound on Louisiana Boulevard, failed to stop for the traffic in front of her colliding into the rear of the vehicle in front of her. The impact of the collision caused the vehicle in front of Henrard to collide into Tisha's vehicle. Henrard immediately admitted to the police officer on scene that she had consumed two alcoholic beverages. The contributing factors to this collision were Henrard's failure to avoid contact with the other vehicles, failure to yield the right of way, and driving under the influence of alcohol. Henrard was arrested and booked for Driving While Intoxicated. An Albuquerque Police Department Uniform Crash Report and a Supplemental DWI Report have been enclosed for your review.

II. INJURIES AND TREATMENT

On December 10, 2013, Jesse presented to nurse practitioner, Tanya Gallegos, with Presbyterian Espanola Family Practice with complaints of right-sided neck pain and stiffness. Jesse advised that his neck pain radiated into his shoulders and collar bone. Examination revealed tenderness upon palpation and muscle spasms in his right trapezius. Jesse was diagnosed with a cervical muscle strain and trapezius muscle spasms. Jesse was prescribed cyclobenzaprine for pain

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management. Jesse was also instructed to increase his fluid intake, rest, apply heat to his areas of pain, and to perform neck stretches. Jesse was advised to return to the clinic should his symptoms worsen or fail to improve.

On December 27, 2013, Jesse presented to Dr. Vidya Subramanian with Presbyterian Espanola Family Practice for a follow up examination of his neck pain. Examination revealed trapezius muscle spasms present in the cervical region on the right side of his neck. Dr. Subramanian discussed various management options with Jesse including imaging studies, pain medications, spine injections, and pain clinic referrals. Radiographs of Jesse's cervical spine were ordered and he was advised to follow up with the clinic in one month.

Pursuant to Dr. Subramanian's referral, Jesse presented to Presbyterian Espanola Hospital Radiology Department on December 27, 2013 for radiographs of his cervical spine to be completed.

Jesse returned to Dr. Subramanian on February 28, 2014 for a follow up appointment of his neck pain. Jesse reported a modest improvement in his neck pain and he advised that his symptoms had not fully resolved. Jesse complained of dull and achy pain located in his left trapezius area. Examination revealed a small degree of trapezius muscle spasms present in the cervical region on the right side of his neck. Jesse was diagnosed with cervicgia and he was given a referral for physical therapy. Jesse was instructed to discontinue the cyclobenzaprine and he was switched to Neurontin as needed. Jesse was advised to follow up with the clinic in two months.

On March 24, 2014, Jesse returned to Dr. Subramanian for a follow up appointment of his neck pain. Examination revealed trapezius muscle spasms in the cervical region which was greater on the right side than the left side. A trigger point injection was ordered and Jesse's Neurontin medication was increased to two times a day as tolerated. **After sterile prep of the skin area, a trigger point injection was performed at the site of Jesse's maximal tenderness in the right trapezius muscle using 1% plain Lidocaine and Kenalog. The same procedure was repeated of Jesse's left trapezius muscle.** Jesse tolerated the injections well and he was instructed to call or return to the clinic as needed.

Jesse returned to Dr. Subramanian on April 28, 2014 for a follow up appointment of his neck pain. Jesse advised that he was scheduled to start physical therapy and that he had modest relief with the trigger point injection he received during the last visit.

Pursuant to Dr. Subramanian's referral, Jesse presented to Physical Therapy Plus on May 15, 2014 for an evaluation and treatment of his cervicgia and trapezius muscle spasms. Jesse advised that he bought a TENS unit and he used it for one week without any relief. Examination revealed limited range of motion in his neck and pain in his lateral shoulder, right periscapular, mid back, low mid back, acromioclavicular joint, levator, clavicle, sternum attachment of clavicle, and side of neck. Jesse's plan of treatment was scheduled for twice a week for six weeks and his treatment consisted of manual therapy and therapeutic exercises. Jesse attended

seven treatment sessions with Physical Therapy Plus and his last appointment was on June 10, 2014.

III. MEDICAL EXPENSES / DAMAGES

As a result of injuries arising out of the accident, Jesse has incurred conservative medical expenses in the amount of Three Thousand Eight Hundred Thirteen Dollars and 00/100 (\$3,813.00). A medical summary, as well as all medical bills, notes, and narrative reports are enclosed.

IV. LOST WAGES/OUT OF POCKET

At the time of the accident, Jesse was employed by Los Alamos National Labs. Due to the injuries sustained in the accident, Jesse was unable to work for 22 hours. At the time he earned Twenty One Dollars and 31/100 (\$21.31) per hour. According to my calculations, Jesse has lost wages in the amount of Four Hundred Sixty Eight Dollars and 82/100 (\$468.82).

Accordingly, this brings Jesse's special damages to a total amount of Four Thousand Two Hundred Eighty One Dollars and 82/100 (\$4,281.82).

V. PUNITIVE DAMAGES

As stated previously, Henrard was charged and arrested for driving while intoxicated. It is black-letter law in New Mexico that driving while intoxicated is a sufficient basis for imposing punitive damages see *Sanchez v. Wiley*, 124 N.M. 47 (Ct. App. 1997). A jury in Bernalillo County will be particularly outraged by Henrard's behavior given our state's continuing problems related to drunk drivers.

Punitive damages are often calculated in multiples of the base damages. Here, Henrard's conduct was particularly egregious. The legal limit for a presumption of impairment is .08. However, Henrard was at a .23 at the time of the crash. Since he was 3x the legal limits for, the multipliers of the compensatory damages for driving under the influence of alcohol or drugs should be a factor of 3 and therefore a 3x multiplier.

New Mexico's Supreme Court also guides us in calculating punitive damages. In economic injury cases, if damages are significant and injury is not hard to detect, the ratio of punitive damages to harm generally should not exceed ten to one; however, in a case where injury is difficult to quantify a disparity in the ratio can be larger to satisfy the injury *Weidler v. Big J Enterprises, Inc.*, 124 N.M. 591 (1997). Punitive Damages are designed to punish the driver for her conduct and to deter others from similar conduct. We believe the punitive damages Jesse is entitled to receive in this case to be significant.

If you are denying coverage for punitive damages in this matter pursuant to the insurance policy, then please state this in writing and we will review the assets of your insured.

04 01 15

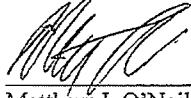
VI. CONCLUSION

Given the above and full consideration of all losses incurred, Jesse asks that you tender an offer of policy limits to resolve his underinsured motorist bodily injury and lost wages claims. While Jesse has not authorized my office to accept an offer of policy limits, he is willing to entertain such an offer.

We would appreciate your review of the enclosed material and that you contact us at your earliest convenience to discuss settling this case without the necessity of litigation, additional costs, and attorneys' fees. Thank you for your attention to this matter.

Very truly yours,

WHITENER LAW FIRM, P.A.



Matthew J. O'Neill, Esq.

MJO/rr
Enclosure

04 21 15



Russell K. Whitener (1948-2013)

Thomas M. Allison | Matthew J. O'Neill

Richard W. Suttan | Daniel P. Buttram | Nicholas J. Rimmer

April 16, 2015

GEICO Insurance

Attn: Charles Johnson

P.O. Box 509105

San Diego, CA 92150-9930

RE: My Client:	Tisha Garcia, on behalf Barbara Garcia, a minor
Date of Loss:	December 17, 2013
Claim No:	021900862-0101-055
Your insured:	Tisha Garcia

Dear Mr. Johnson:

Enclosed please find a settlement package that addresses the liability, physical injuries, and damages in the above-referenced matter. This material is being submitted for settlement discussion purposes only regarding the underinsured motorist bodily injury claim of Barbara Garcia (hereinafter "Barbara") and may not be used for any other purpose. P

I. LIABILITY

This is a clear case of liability against the underinsured motorist Sylvia Henrard (hereinafter "Henrard"). The collision occurred on December 7, 2013 at the intersection of Louisiana Boulevard and Menaul Boulevard in Albuquerque, New Mexico. Barbara was a restrained passenger in the vehicle driven by her mother, Tisha Garcia (hereinafter "Tisha"), who was traveling northbound on Louisiana Boulevard. Tisha was the first car in line stopped for the red light at the intersection, when Henrard, who was also traveling northbound on Louisiana Boulevard, failed to stop for the traffic in front of her colliding into the rear of the vehicle in front of her. The impact of the collision caused the vehicle in front of Henrard to strike into Tisha's vehicle. Henrard immediately admitted to the police officer on scene that she had consumed two alcoholic beverages. The contributing factors to this collision were Henrard's failure to avoid contact with the other vehicles, failure to yield the right of way, and driving under the influence of alcohol. Henrard was arrested and booked for Driving While Intoxicated. An Albuquerque Police Department Uniform Crash Report has been enclosed for your review.

II. INJURIES AND TREATMENT

On December 12, 2013, Tisha presented Barbara to Dr. Chelsea Kirby with complaints of neck pain. Examination revealed tenderness to the right side of her neck. Barbara was diagnosed with musculoskeletal neck pain and upper back pain. Tisha was instructed to apply ice packs and heat to Barbara's neck and upper back. Tisha was advised that Barbara may take Tylenol or Motrin as needed for pain management and to return Barbara to the clinic if her symptoms worsened or failed to improve.

4110 Cutler Ave. NE

Albuquerque, NM 87110

505.242.3333, Fax 505.242.3322

WhitenerLawFirm.com

Tisha returned Barbara to Dr. Kirby on February 19, 2014 with complaints of right shoulder and cervical neck pain. Examination revealed tenderness in her neck, cervical spine, and thoracic spine. Radiographs of Barbara's cervical and thoracic spine were completed. Barbara was given a referral to physical therapy.

Pursuant to Dr. Kirby's referral, Tisha presented Barbara to Presbyterian Espanola Hospital Physical Therapy on February 27, 2014 for an evaluation and treatment of her neck pain. Tisha advised that Barbara's neck pain radiated into her right scapula and that Barbara had pain with head and neck movements. Examination revealed decreased cervical range of motion. Barbara's treatment was scheduled for two times a week for four weeks. Barbara's treatment consisted of myofascial release and therapeutic exercises. Barbara attended six physical therapy sessions and she was discharged from care on March 27, 2014.

III. MEDICAL EXPENSES / DAMAGES

As a result of injuries arising out of the accident, Tisha, on behalf of Barbara, has incurred conservative medical expenses in the amount of Three Thousand Ninety Eighty Dollars and 00/100 (\$3,098). A medical summary, as well as all medical bills, notes, and narrative reports are enclosed.

IV. PUNITIVE DAMAGES

As stated previously, Henrard was charged and arrested for driving while intoxicated. It is black-letter law in New Mexico that driving while intoxicated is a sufficient basis for imposing punitive damages see *Sanchez v. Wiley*, 124 N.M. 47 (Ct. App. 1997). A jury in Bernalillo County will be particularly outraged by Henrard's behavior given our state's continuing problems related to drunk drivers.

Punitive damages are often calculated in multiples of the base damages. Here, Henrard's conduct was particularly egregious. The legal limit for a presumption of impairment is .08. However, Henrard was at a .23 at the time of the crash. Since he was 3x the legal limits for, the multipliers of the compensatory damages for driving under the influence of alcohol or drugs should be a factor of 3 and therefore a 3x multiplier.

New Mexico's Supreme Court also guides us in calculating punitive damages. In economic injury cases, if damages are significant and injury is not hard to detect, the ratio of punitive damages to harm generally should not exceed ten to one; however, in a case where injury is difficult to quantify a disparity in the ratio can be larger to satisfy the injury *Weidler v. Big J Enterprises, Inc.*, 124 N.M. 591 (1997). Punitive Damages are designed to punish the driver for her conduct and to deter others from similar conduct. We believe the punitive damages Tisha is entitled to receive in this case to be significant.

04 21 15

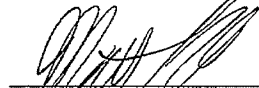
V. CONCLUSION

Given the above and full consideration of all losses incurred, Tisha, on behalf of Barbara, asks that you tender an offer of policy limits to resolve her underinsured motorist bodily injury claim. While Tisha, on behalf of Barbara, has not authorized my office to accept an offer of policy limits, she is willing to entertain such an offer.

We would appreciate your review of the enclosed material and that you contact us at your earliest convenience to discuss settling this case without the necessity of litigation, additional costs, and attorneys' fees. Thank you for your attention to this matter.

Very truly yours,

WHITENER LAW FIRM, P.A.



Matthew J. O'Neill, Esq.

MJO/rr
Enclosure

STATE OF NEW MEXICO
COUNTY OF RIO ARriba
FIRST JUDICIAL DISTRICT

JESSE H. GARCIA, TISHA GARCIA, individually
and as parents and next friends of BARBARA GARCIA,
a minor,

Plaintiffs,

v.

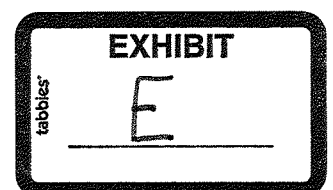
Case No. D-117-CV-2016-00030

GEICO GENERAL INSURANCE COMPANY,
A foreign corporation doing business in the
State of New Mexico,

Defendant.

NOTICE OF FILING OF REMOVAL

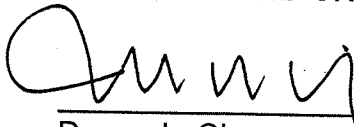
PLEASE TAKE NOTICE that Defendant GEICO General Insurance Company, by and through its counsel of record, Chapman and Charlebois, P.C., (Donna L. Chapman and Mark D. Trujillo), has filed a Notice of Removal in the United States District Court for the District of New Mexico. A true and correct copy of the Notice of Removal, attached to this Notice as Exhibit "1" was emailed to:



Matthew O'Neill
Whitener Law Firm
4110 Cutler Ave. NE
Albuquerque, NM 87102
505-242-3333
mateo@whitenerlawfirm.com
Attorney for Plaintiff

Respectfully submitted,

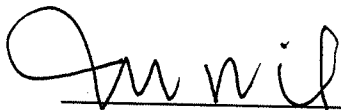
CHAPMAN AND CHARLEBOIS, P.C.



Donna L. Chapman
Mark D. Trujillo
P.O. Box 92438
Albuquerque, NM 87199
505-242-6000
donna@cclawnm.com
mark@cclawnm.com
Attorneys for Defendant GEICO

I HEREBY CERTIFY the foregoing was served
on the following counsel of record via the
Odyssey file & Serve system and on this
10th day of March, 2016:

Matthew O'Neill
Whitener Law Firm
4110 Cutler Ave. NE
Albuquerque, NM 87102
505-242-3333
mateo@whitenerlawfirm.com
Attorney for Plaintiff



Mark D. Trujillo

STATE OF NEW MEXICO
COUNTY OF RIO ARriba
FIRST JUDICIAL DISTRICT

JESSE H. GARCIA, TISHA GARCIA, individually
and as parents and next friends of BARBARA GARCIA,
a minor,

Plaintiffs,

v.

Case No. D-117-CV-2016-00030

GEICO GENERAL INSURANCE COMPANY,
A foreign corporation doing business in the
State of New Mexico,

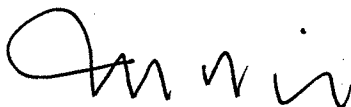
Defendant.

ENTRY OF APPEARANCE

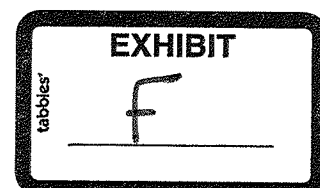
Chapman and Charlebois, P.C. (Donna L. Chapman and Mark D. Trujillo), hereby enter their appearance on behalf of Defendant GEICO General Insurance Company. Copies of all documents pertaining to litigation in this matter should be sent to the undersigned attorneys.

Respectfully submitted,

CHAPMAN AND CHARLEBOIS, P.C.

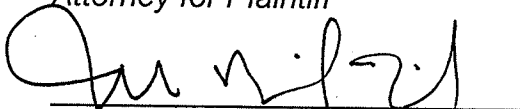


Donna L. Chapman
Mark D. Trujillo
PO Box 92438
Albuquerque, NM 87199
505-242-6000
donna@cclawnm.com
mark@cclawnm.com
Attorneys for GEICO



I hereby certify the foregoing was served
on the following counsel of record via the
Odyssey File & Serve system on this 10th
day of March, 2016:

Matthew O'Neill
Whitener Law Firm
4110 Cutler Ave. NE
Albuquerque, NM 87102
505-242-3333
mateo@whitenerlawfirm.com
Attorney for Plaintiff


Mark D. Trujillo

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JESSE H. GARCIA, TISHA GARCIA, individually and as parents and next friends of BARBARA GARCIA, a minor,

(b) County of Residence of First Listed Plaintiff RIO ARRIBA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

MATTHEW J. O'NEIL
WHITENER LAW FIRM, 4110 CUTLER AVE NE
ALBUQUERQUE, NM 87110 (505) 242-3333

DEFENDANTS

GEICO GENERAL INSURANCE COMPANY, a foreign corporation
Doing business in the State of New Mexico

County of Residence of First Listed Defendant MARYLAND
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

DONNA L. CHAPMAN/MARK D. TRUJILLO
CHAPMAN AND CHARLEBOIS, P.C., 4100 OSUNA NE, STE 2-203
ALBUQUERQUE, NM 87109 (505) 242-6000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

EXHIBIT

6

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sec. 1332, 1441, 1441(b), 1446 and 1446(b)(2)(A)

Brief description of cause:
Personal Injury, UM/UIM

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/10/16

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE